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U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

02 JUL 1984

General Counsel
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84-2209/1

Honorable David A. Stockman
 Director
 Office of Management and Budget
 Washington, D.C. 20503

Dear Mr. Stockman:

This is in response to your request for the views of the Department of Justice with respect to the concerns raised in the May 17 letter of Deputy Director of Central Intelligence McMahon regarding S. 1787, the "drug tsar" bill.

By way of background, we would note that it was the Department of Justice which took the lead in urging disapproval by the President of H.R. 3963 of the 97th Congress which included a highly objectionable drug tsar measure. In view of the overwhelming support in the Congress for drug tsar legislation, we worked within the Administration to develop a version of such legislation that would be acceptable to all affected departments and agencies. Our suggested alternatives to S. 1787 were discussed on more than one occasion in the Cabinet Council on Legal Policy of which the Director of Central Intelligence (DCI) is a member.

After substantial effort, we were finally cleared by the Administration to submit to key Senators a substitute for S. 1787. A copy of that proposal, marked up to show the changes made by the Senate, is enclosed.

In summary, our proposal would effectively codify the existing Cabinet Council on Legal Policy, making the Attorney General the chairman of a "National Drug Policy Law Enforcement Board." Although the Senate expanded the powers of the Chairman and the Board beyond what we had proposed, the powers of the Board and the Chairman (the Attorney General) are so circumscribed that it hardly seems accurate to refer to the Board or the Chairman as a "drug tsar." In the House a far more onerous version has been reported out of the Judiciary Committee. We think it highly unlikely that a better bill can be secured from this Congress.



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As for the specific objections which the Deputy Director of Central Intelligence has raised with respect to S. 1787, as approved by the Senate, we are frankly surprised by the objections to subsection 4(a)(3) and 4(b)(3). These subsections are unchanged from the version submitted by the Administration and we would thus suggest that the objections are untimely as they should have been raised when the issue was under review within the Administration last year. In addition, we simply cannot agree that these provisions create any potential for jeopardizing intelligence sources and methods. In this regard, it must be borne in mind that neither the Chairman of the Board nor the Board itself are strangers to intelligence activities. The Attorney General has responsibilities in the intelligence area which he exercises through the Department's Office of Intelligence Policy and Review, as well as the Federal Bureau of Investigation and the Drug Enforcement Administration, both of which agencies are part of the intelligence community. Moreover, the bill is written in such a way that the DCI would, by statute, be a member of the Board. ✓

Concerning the objections to the budgetary review powers set out in subsections 4(a)(1) and 4(c)(3) of S. 1787, these powers were not in the Administration substitute but were added due to the strongly held view in the Congress that some coordinated Executive Branch review of drug enforcement related budgets is needed. While we do not favor the budgetary review provisions of S. 1787, we think it is unlikely that a more favorable arrangement can be obtained as the current provisions were added despite our strenuously stated objections. Moreover, we do not believe the limited budget review authority in S. 1787, as approved, presents the potential for mischief that CIA fears. Again, the Attorney General would be the Chairman of the Board and the DCI would be a member, along with the Secretary of State, the Secretary of Defense and others sensitive to intelligence needs.

Finally, CIA objects to subsection 4(c)(1) which, again, was part of the Administration proposal. Although this provision was modified by the Senate to give the Attorney General, rather than the Board, the powers described therein, we do not believe this change is significant. Again, the Attorney General is sensitive to intelligence concerns and is unlikely -- even in some future Administration -- to act contrary to the wishes of the Board which includes the DCI, Secretary of Defense and others among its membership.

CIA proposes a new provision totally excepting the intelligence community from the bill. We believe this would be an extremely unwise strategy move and an action which could well be counter-productive. In this regard, there is a perception among Congressional advocates of this legislation that intelligence agencies have not been sufficiently supportive of drug enforcement efforts. While we do not share this view, the fact remains that

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coordination of drug-related intelligence efforts with those of other Executive Branch activities is one of the primary purposes of S. 1787. To suggest a total exception for intelligence agencies, therefore, is highly unlikely to be successful and may well trigger an amendment to increase rather than eliminate coordination of intelligence activities.

To reiterate, we think S. 1787, as approved by the Senate, is as favorable to the interests of the Administration as any legislation that we could realistically expect the Congress to accept. We strongly recommend against attacks on this bill. Moreover, we would note that Congressional interest in this issue has largely subsided, primarily because we are no longer voicing complaints about the bill. The best prospect for avoiding any legislation whatsoever in this area, therefore, would appear to be for us to avoid comment on the issue. To attempt to secure further amendments at this point will only serve to focus increased attention on an issue which has become virtually dormant.

Sincerely,

~~Robert A. McConnell~~

Robert A. McConnell
Assistant Attorney General
Office of Legislative and
Intergovernmental Affairs

Enclosure

✓cc: John N. McMahon
Deputy Director
Central Intelligence Agency

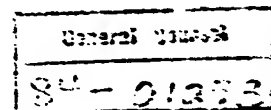
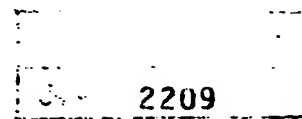
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Central Intelligence Agency

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Washington D.C. 20505



17 May 1984

The Honorable David A. Stockman
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Stockman:

Senator Biden's Drug Czar Bill, S. 1787, is currently under consideration in the House of Representatives. While I certainly favor efforts to improve the Government's ability to cope with the drug problem, I am concerned that certain aspects of this Bill could inadvertently have a detrimental effect on intelligence activities.

Subsections 4 (a) (3) and 4 (b) (3) could be read as authorizing the Board and the Drug Czar to coordinate strategic narcotics intelligence activities abroad -- a responsibility currently exercised by the Director of Central Intelligence (DCI) in coordination with the Secretary of State. These activities are largely conducted by the same personnel who are engaged in other intelligence pursuits, and the establishment of a separate chain of authority for narcotics-related activities could disrupt other intelligence activities and interfere with liaison with foreign intelligence services and the conduct of foreign affairs. The Czar's authority to evaluate narcotics information might also be interpreted as entitling him to make determinations as to the use of narcotics intelligence outside of normal security channels independent of other intelligence concerns, thereby jeopardizing intelligence sources and methods.

Subsections 4 (a) (1) and 4 (c) (3) of the Bill could interfere with the formulation of the Intelligence Community budget by giving the Narcotics Board the power to fund narcotics efforts out of money appropriated for other intelligence projects vital to the security of this country. I believe that robbing Peter to pay Paul is not the answer to the drug enforcement problem. Instead, senior officials in federal agencies involved in drug enforcement should work closely with members of Congress to obtain the necessary funds to combat the drug problem.

Finally, subsection 4 (c) (1) of the Bill would interfere with the DCI's responsibilities for allocating intelligence assets -- in this case, personnel. Because intelligence officers have multiple responsibilities, having them serve two masters would cause total confusion.

Although subsection 4 (d) provides that "notwithstanding the authority granted in [Section 4 (a)], the Board shall not interfere with routine law enforcement or intelligence decisions of any agency," it does not protect Intelligence Community interests because it covers only the Board's actions; the Czar apparently is not covered. Moreover, it protects from interference only routine intelligence decisions. Nonroutine, indeed significant, intelligence decisions could be compromised.

One way to avoid the potential problems outlined above would be to urge the Congress to consider expanding the scope of the noninterference provision by striking the reference to "intelligence decisions" in subsection 4 (d) and by adding a new provision as follows:

Nothing in section 4 shall limit the authorities provided the Director of Central Intelligence by the National Security Act of 1947, as amended, the CIA Act of 1949, or any other statute or Executive Order.

I am open to any other suggestions regarding possible approaches to resolving the issues raised in this letter. I hope that by working together we can reach an agreement with the Congress that will improve the effectiveness of the Government's effort against drug trafficking and at the same time protect intelligence interests.

Sincerely,

[Redacted Signature]

John M. McInane
Deputy Director of Central Intelligence

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cc: Mr. Jay B. Stephens
Deputy Associate Attorney General

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- 1 - DDCI
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